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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JASON GULVARTIAN,

Plaintiff and Appellant,

v.

ANDY FAKHOURY et al.,

Defendants and Respondents.

B216063 c/w B217430

(Los Angeles County
Super. Ct. No. BC342209)

APPEAL from judgments of the Superior Court of Los Angeles County. Michael L. Stern, Judge. Affirmed.

Law Office of Barry J. Jacobs and Barry J. Jacobs; Law Office of Linda Pethick and Linda Pethick for Plaintiff and Appellant.

Wendy L. Slavkin for Defendants and Respondents.

Jason Gulvartian (appellant) sued respondents Andy Fakhoury, Jamal Sayegh, and Hiam Sayegh (respondents) for breach of contract and specific performance after they refused to sell him certain property located at 3160 Riverside Drive, Los Angeles, California (the property). Following a bench trial on the breach of contract cause of action, judgment was entered in favor of respondents.

The trial court later entered a separate judgment for attorney fees and costs.[1] By the amended judgment, the trial court awarded respondents $138,739 in attorney fees and $7,999.17 in costs, for a total amount of $146,738.17.

We affirm the judgments.

CONTENTIONS

Appellant contends that the trial court committed legal error by: (1) applying an incorrect measure of damages, and (2) considering appellant's ability to perform. Appellant further contends that the court's decision is not supported by substantial evidence. Specifically, appellant argues that, contrary to the court's decision, appellant suffered measurable damages resulting from respondents' breach.[2]

As to attorney fees, appellant contends that there was no legal basis for the award. Appellant's primary argument is that there existed no privity of contract between appellant and respondents, thus respondents were not entitled to the award of attorney fees. Appellant further argues that even if such privity of contract existed, the amount of such fees was contractually capped at $10,000. Finally, appellant argues that even if respondents were entitled to an award of fees, the award should be reduced based on appellant's challenges to certain specified billing items.

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[1] Appellant filed separate appeals from the judgment after bench trial and the judgment for attorney fees and costs. On our own motion, we consolidated the two appeals.

[2] Appellant also argues that the validity and enforceability of respondents' lessee's exercise of the option to purchase was not affected by any alleged breach of the lease by H & M One Stop, Inc. Respondents do not address this argument in their brief, therefore we consider it conceded on appeal. However, this issue was not relevant to the trial court's decision and does not affect our opinion. Therefore, we do not address it.

FACTUAL BACKGROUND

In May 2003 respondents leased the property to H & M One Stop, Inc. (One Stop). The property was laid out as a gas station. The written lease agreement between respondents and One Stop (lease) provided for an initial term of 60 months, until April 30, 2008, and an option to extend for another three years. The lease included the following "Option to Purchase":

> "Lessee is hereby granted the first right to purchase the property if Lessor elects to sell the property during the lease term or the option period. Should Lessor receive an offer to purchase, Lessor shall notify Lessee and Lessee shall have 72 hours to match the offer in writing. If Lessee matches the offer but fails for any reason to thereafter make the purchase, Lessee shall pay Lessor $10,000.00 to compensate Lessor for the expenses, losses, and inconvenience suffered."

In June 2005, respondents elected to sell the property to Morton LaKretz (LaKretz) for a purchase price of $2,090,000. Thereafter, notice of LaKretz's offer was prepared and served on One Stop as required under the lease. On September 9, 2005, One Stop exercised its option to purchase the property "on terms and conditions matching those" set forth in the standard offer, agreement and escrow instructions between respondents and LaKretz (purchase agreement). One Stop assigned its exercised option to purchase to appellant by written assignment dated September 10, 2005. On September 12, 2005, appellant entered a contract of sale of commercial property agreeing to sell the property to Vitoil Corporation (Vitoil) for $3,500,000, subject to the One Stop lease.

On October 14, 2005, respondents informed appellant and LaKretz of their decision not to sell the property.

PROCEDURAL HISTORY

On October 28, 2005, appellant filed a complaint for specific performance and breach of contract against respondents. Respondents demurred, and on March 28, 2006, appellant filed his first amended complaint, alleging the same causes of action. Respondents again demurred, but the trial court overruled the demurrer. Respondents filed their answer to the first amended complaint on July 25, 2006.

On November 14, 2005, LaKretz filed a complaint against respondents seeking specific performance of his alleged purchase agreement with respondents. By a stipulation entered on January 9, 2007, appellant's case against respondents was consolidated with LaKretz's case against respondents. Because of the consolidation, the trial date was continued from January 24, 2007 to March 21, 2007.

Respondents filed a motion for summary judgment, arguing that appellant's assignment was invalid as a matter of law. On July 24, 2007, after allowing additional briefing, the trial court granted respondents' summary judgment motion on the ground that "the plain language . . . indicates an intent to prohibit any assignment of the option to purchase." On July 27, 2007, the trial court dismissed appellant's case. On August 24, 2007, appellant appealed the summary judgment, which was reversed by this court in an unpublished opinion. (*Jason Gulvartian v. Andy Fakhoury et al.* (Jul. 28, 2008, B201818).)

The bench trial proceeded on February 23 and 24, 2009.[3] At trial, appellant pursued only his breach of contract cause of action, having abandoned his claim for specific performance. On February 27, 2009, the trial court issued its judgment after bench trial. The court concluded that $2,090,000 was the fair market value of the property in September 2005. The court further found that the alleged future re-sale of the property to Vitoil was speculative, and that the $3,500,000 sale price affixed by Vitoil was unsupported by the evidence. Appellant had failed to show that he made any expenditures or changed position in reliance on the sale. Thus, the court found that appellant had suffered no general or special damages. Because appellant had failed to establish damages, it was ordered that appellant take nothing by way of his complaint, and respondents were awarded their costs of suit.

Notice of entry of judgment was filed on March 3, 2009. On April 27, 2009, appellant filed a notice of appeal from the judgment after bench trial.

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3 Appellant filed a notice of waiver of jury trial.

On March 16, 2009, respondents filed their motion for an award of attorney fees and costs. The motion was made pursuant to Code of Civil Procedure section 1033.5, on the grounds that attorney fees and costs were provided for in the underlying contract and admitted by appellant. Appellant opposed the motion, arguing that because there existed no privity of contract between the parties, no award of attorney fees could properly be made. In addition, appellant argued that even if respondents were entitled to an award of fees, such fees were properly reduced to the extent that they were incurred in connection with litigation on respondents' cross-complaint against Bruce Canfield (Canfield) (respondents' agent/broker), or litigation brought by LaKretz. Respondents filed a reply, and the matter was heard on May 5, 2009. The trial court granted respondents' request for $138,739 in attorney fees in its entirety.

Respondents filed their memorandum of costs on March 17, 2009. Appellant filed his motion to tax costs on April 3, 2009, which respondents opposed. The trial court granted in part and denied in part appellant's motion to tax costs. Respondents' total request for costs was $162,461.37; they were awarded $7,999.17.

On July 2, 2009, appellant appealed the judgment for attorney fees and costs.

DISCUSSION

I. Damages

The elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages. (*Acoustics, Inc. v. Trepte Construction Co.* (1971) 14 Cal.App.3d 887, 913.) The focus of the trial court's decision was its finding that appellant had not established the essential element of damages on his breach of contract claim. Because this finding was dispositive of appellant's claim, we begin with a discussion of the court's legal and factual analysis of damages.

A. The appropriate measure of damages

1. The evidence at trial

At trial appellant claimed that his damages against respondents consisted of the difference between the $3,500,000 sale price stated in his contract with Vitoil and the

$2,090,000 sale price stated in the assignment from One Stop. Alternatively, appellant claimed damages of $500,000 -- the difference between the $3,500,000 sale price stated in his contract with Vitoil and the $3 million fair market value of the property set by appellant's expert, appraiser Gene Dockins (Dockins).

In contrast, respondents argued that appellant suffered no damages. Respondents relied on *Sierra View Local Health Care Dist. v. Sierra View Medical Plaza Associates* (2005) 126 Cal.App.4th 478, 487 (*Sierra View*), which cited Code of Civil Procedure section 1263.320, subdivision (a), and defined fair market value as "'the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obligated to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.'" Because $2,090,000 was the highest price a willing buyer would pay a willing seller in the free market, respondents argued, it was the fair market value of the property. And because there was no difference between the fair market value of the property on the date of the breach and the contract price, there were no damages.

The trial court agreed with respondents that the fair market value of the property was $2,090,000. It determined that the $3,500,000 sale price between appellant and Vitoil was "not established by the evidence presented at trial or based on anything firm." In addition, it did "not appear to be the result of an arms' length negotiation or tested by the caldron of commerce." Further, the court was not persuaded that Vitoil was capable of fulfilling the commitments stated in the contract.

Nor was the court convinced by the testimony of Dockins, because "his analysis presented many variables and qualifications that undermine[d] its use by the Court." In contrast, the negotiations which led to the $2,090,000 sale price were "at arms' length and vigorously pursued on both sides."

2. The court's method of determining damages was proper

Appellant argues that the trial court erred in finding no damages. Appellant challenges the case law and statutory law relied upon by the trial court. Our review of this law, and its applicability to the facts of this case, is de novo. (*People v. Cromer* (2001) 24 Cal.4th 889, 894 [pure questions of law are reviewed under independent or de novo standard].)

First, appellant questions the trial court's acceptance of the definition of fair market value set forth in *Sierra View, supra,* 126 Cal.App.4th at page 487. Without further analysis, appellant takes issue with the fact that this case concerned valuation in a condemnation proceeding. Appellant makes no effort to explain how the fair market value of property would be different in this situation. In addition, appellant claims that Code of Civil Procedure section 1263.320 is inapplicable, as it applies only to "mandatory compensation" for "property taken." (See Code Civ. Proc., § 1263.310.)

Appellant is correct that the case and statute relied upon are relevant to condemnation proceedings. However, the definition of fair market value expressed in those authorities is applicable. As explained in *Sierra View,* even in condemnation proceedings, fair market value is "to be determined in terms of what the property would be worth to a knowledgeable but disinterested buyer *in the general market* -- a generic buyer as opposed to a specific one -- as if there were no condemnation action." (*Sierra View, supra*, 126 Cal.App.4th at p. 487.) Thus, vigorous, arms' length negotiations such as those which took place between respondents and LaKretz may properly be relied upon as indicators of fair market value -- regardless of the nature of the proceedings.

Appellant also takes issue with *Lewis Jorge Construction Management, Inc. v. Pomona Unified School Dist.* (2004) 34 Cal.4th 960, 974 (*Lewis Jorge*), also relied upon by the trial court. Appellant brushes this case off as concerning only "a lost profits measure of damages," which, appellant argues, has no application to this appeal. However, the court cited *Lewis Jorge* for the proposition that appellant's purported "lost profits" damages on his contract with Vitoil should not be awarded due to insufficient proof at trial. The trial court made it clear that it was not convinced that the sale price stated in the contract between appellant and Vitoil was freely negotiated, or that Vitoil was even capable of fulfilling its contractual commitment. As stated in *Lewis Jorge*, lost profits damages on subsequent contracts "are frequently denied as too speculative." (*Id.* at p. 975.) The trial court did not err in denying them here.

Appellant argues that the correct measure of damages in this matter is set forth in Civil Code section 3306. That statute states:

> "The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, the difference between the price agreed to be paid and the value of the estate agreed to be conveyed at the time of the breach, the expenses properly incurred in preparing to enter upon the land, consequential damages according to proof, and interest."

Based on this statute, appellant argues, he was entitled to recover: (1) the difference between the fair market value of the property on the date of the breach and the contract price, and (2) consequential damages.

Even assuming that the trial court should have applied Civil Code section 3306, we still find no reversible error.[4] First, the trial court determined that the fair market value of the property on the date of the breach was $2,090,000. Thus -- assuming the evidence supported the trial court's determination of fair market value -- that value did not differ from the contract price, therefore no damages occurred.[5] Second, the court found that appellant did not prove any consequential damages such as "sale costs, escrow costs, [or] appraisals of the property preparatory to sale." Nor does appellant argue that such consequential damages existed. Thus, even if the trial court erred in failing to specifically rely upon Civil Code section 3306, no prejudicial error occurred. (See Code

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4 The trial court relied on Civil Code section 3358, which states that "no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides."

5 Appellant's argument that substantial evidence did not support the trial court's conclusion that the fair market value of the property was $2,090,000, is reviewed separately below.

Civ. Proc., § 475 [“No judgment, decision or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial”].)

B. Substantial evidence supported the trial court’s decision on damages

The trial court determined that the fair market value of the property in September 2005 was $2,090,000 -- the sale price respondents negotiated with LaKretz in the summer of 2005. The evidence supporting this decision consisted of the purchase agreement as well as LaKretz’s original offer of a substantially lower amount.

We review the trial court’s decision for substantial evidence. Under this standard, “our duty ‘begins and ends’ with assessing whether substantial evidence supports the verdict. [Citation.] ‘[The] reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact.’ [Citation.] We review the evidence in the light most favorable to the respondent, resolve all evidentiary conflicts in favor of the prevailing party and indulge all reasonable inferences possible to uphold the . . . verdict. [Citation.]” (*US Ecology, Inc. v. State of California* (2005) 129 Cal.App.4th 887, 908.) “‘It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact.’ [Citation.] . . . [W]e do not evaluate the credibility of the witnesses or otherwise reweigh the evidence. [Citation.] Rather, ‘we defer to the trier of fact on issues of credibility. [Citations.]’” (*Escamilla v. Department of Corrections & Rehabilitation* (2006) 141 Cal.App.4th 498, 514-515.)

Appellant points to conflicting evidence presented by appellant’s expert, Dockins. Dockins had worked as an appraiser for 32 years, and had appraised over 500 gas stations. Dockins had inspected the site of the property, analyzed its characteristics, and researched comparable sales in the area. Dockins testified that the value of the property was $3 million at the date of the breach in the fall of 2005. Dockins also testified that he had reviewed an appraisal report of another expert which valued the property at $4 million.

As explained above, it is not our task to reweigh the evidence. The trial court was convinced that the arms’ length negotiations between respondents and LaKretz resulted in a more accurate valuation of the property than the testimony of appellant's expert. Substantial evidence supported the trial court's decision, and this court may not reweigh the conflicting evidence presented by appellant.[6]

Alternatively, appellant argues that he is entitled to nominal damages "which should be sufficient to reverse the award of attorney fees and costs in this case." Appellant cites Civil Code section 3360, which states that "[w]hen a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages." Appellant also cites *Sweet v. Johnson* (1959) 169 Cal.App.2d 630 at pages 632-633 ["nominal damages, which are presumed as a matter of law to stem merely from the breach of a contract [citation], may properly be awarded for the violation of such a right"].)

While the cited authorities *permit* nominal damages, they do not require such damages. The trial court was well within its discretion in determining that such nominal damages were not warranted in this matter. In addition, as stated in *Sweet v. Johnson, supra*, 169 Cal.App.2d at page 633, "the general rule is that the failure to award nominal damages is not alone ground for reversal of a judgment or for a new trial [citations]." Thus, we reject appellant's claim that he should have been awarded nominal damages.

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6 Appellant raises what he characterizes as a "judicial admission" found in the second amended cross-complaint (SAXC), filed November 2, 2006, in *Morton LaKretz v. Fakhoury et al.*, Los Angeles Superior Court case No. BC342995 (consolidated with this case and settled). Appellant has attached the SAXC to his opening brief in this appeal and requests that we take judicial notice of the document pursuant to Evidence Code section 452, subdivision (d). Paragraph 8(c) of the SAXC states that respondents' real estate broker represented to respondents that the property was worth approximately $2 million, while paragraph 9(c) of the SAXC presents respondents' allegation that it was in fact worth $3 million.

We grant appellant's request for judicial notice of the SAXC, but decline to treat respondents' assertions regarding the value of the property as judicial admissions. Instead, respondents' assertion was part of their cause of action for fraud and subject to proof at trial. (See *Bahan v. Kurland* (1979) 98 Cal.App.3d 808, 812 [allegations of mixed factual-legal conclusions drawn by the pleader are not judicial admissions and should not preclude trial on the merits of the issue].)

II. Ability to perform

Appellant argues that the trial court erred in treating "ability to perform" as an element of his breach of contract cause of action. Appellant argues that the trial court "misapplied the law and erroneously applied an element in a specific performance case to this case concerning breach of contract."

The trial court's decision does not reveal a misapplication of the law. The trial court first noted that appellant had abandoned his claim for specific performance, but nevertheless further noted that appellant had failed to demonstrate his ability to perform. Thus, the court made it clear that the element of ability to perform was relevant to the abandoned specific performance cause of action, not the breach of contract cause of action. In addition, the court's comments about appellant's inability to perform revealed the court's factual conclusion that the reason respondents decided not to sell the property to appellant was that appellant did not have the financial capability to perform -- not, as appellant suggests, because the property was worth more than the contract price.

These comments by the trial court regarding appellant's ability to perform were not dispositive of appellant's claim.[7] Instead, the court's decision was based on appellant's failure to establish the element of damages. As the trial court concluded, "[l]acking any general or special damages, [appellant's] claim for breach of contract fails."

As set forth above, the trial court's decision that appellant failed to establish the essential element of damages was supported by the law and the facts. No reversible error occurred.

III. Attorney fee/cost award

A. Legal Basis for attorney fee award

Appellant's main argument regarding attorney fees is that there was no legal basis for such fees. Pursuant to Code of Civil Procedure section 1033.5, attorney fees may be awarded to a prevailing party if authorized by contract, statute, or law. (Code Civ. Proc.

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[7] Because appellant's ability to perform was not a dispositive issue, we decline to address the case law on this subject set forth in appellant's reply brief.

§ 1033.5, subd. (a)(10).) In this case, the trial court awarded respondents attorney fees pursuant to contract. Appellant argues that, because there was no privity of contract between appellant and respondents, the trial court erred in awarding such fees.

"Generally, a trial court's determination of whether a party is entitled to an award of attorney fees, and the calculation of such a fee award, are both reviewed for abuse of discretion. [Citations.]" (*Jankey v. Lee* (2010) 181 Cal.App.4th 1173, 1179.) However, where, as here, the question is "whether an award of attorney fees is warranted under a contractual attorney fees provision, the reviewing court will examine the applicable . . . provisions of the contract. Where extrinsic evidence has not been offered to interpret the lease, and the facts are not in dispute, such review is conducted de novo. [Citation.]" (*Carver v. Chevron U.S.A., Inc.* (2002) 97 Cal.App.4th 132, 142.) To the extent that the award relies on factual findings, whether express or implied, we examine the record for substantial evidence to support the findings. (*Federal Home Loan Mortgage Corp. v. La Conchita Ranch Co.* (1998) 68 Cal.App.4th 856, 860.) We bear these standards in mind as we review the trial court's decision to award fees in this matter.

1. The Lease authorizes the award of attorney fees

Appellant attacks the fee award on the ground that he was not a party to either contract at issue in this matter. The two relevant contracts were (1) the lease between One Stop and respondents, and (2) the purchase agreement between LaKretz and respondents. Both contracts contained bilateral attorney fee provisions. Appellant argues that because he was not a party to either contract, he would not have been entitled to attorney fees had he prevailed. Because he could not have recovered such fees, appellant argues, respondents should not be entitled to do so.

Appellant acknowledges that he was the assignee of the option to purchase contained in the Lease. However, he argues that One Stop "assigned only the exercised Option to Purchase" to appellant. Appellant takes the position that "[n]othing else touching or concerning the Lease or the lease premises was assigned, including the attorney fee provision."

Appellant's lawsuit was based on a claim for breach of contract. In his complaint, appellant argued that respondents "breached the written Lease." Thus, appellant took the position that he had sufficient contractual privity with respondents so as to be entitled to enforce the lease. The lease contained an attorney fee provision which read:

> "If it is subsequently necessary for either party to retain legal counsel to enforce the terms and provisions of this agreement, the prevailing party shall be entitled to receive, and the losing party shall pay, the reasonable attorney's fees and expenses of the prevailing party, in addition to all other amounts and other relief which the prevailing party is entitled to recover."

Appellant also took the position that he was entitled to attorney fees pursuant to this provision of the lease.[8]

Even if, as appellant argues, the assignment was limited to the option to purchase, that option was subject to all of the provisions of the lease. Under article 14, "Assignment and Subletting," the lease specifically provided that "[a]ny sublease or assignment permitted by Lessor shall be expressly subject to the provisions of this lease." Thus, whether appellant was in privity with respondents as an assignee of the entire lease

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8 In his first amended complaint, appellant sought attorney fees "pursuant to the Lease and/or Purchase Contract and for costs." Citing *Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671 (*Sessions*), appellant argues that even so, he is not estopped from denying respondents' entitlement to fees. Citing *Leach v. Home Savings & Loan Assn.* (1986) 185 Cal.App.3d 1295, the *Sessions* court confirmed that "[t]he mere allegation in a complaint that the plaintiff is entitled to receive attorney fees does not provide a sufficient basis for awarding them to the opposing party if the plaintiff does not prevail." (*Sessions, supra*, at pp. 681-682.) However, appellant did more than make a "mere allegation" that he was entitled to attorney fees. The allegations of appellant's complaint, taken as a whole, contradict his position that he had no contractual privity with respondents and undermine his argument that he was not bound by the attorney fee provision in the lease.

agreement, or just the option to purchase, he was subject to the attorney fee provision contained within the lease.[9]

Appellant relies heavily on *Canal-Randolph Anaheim, Inc. v. Wilkowski* (1978) 78 Cal.App.3d 477. *Canal-Randolph* was an unlawful detainer action. The plaintiff was landlord of an office building. Two of the defendants were an attorney and his law corporation, who were not parties to the lease containing the attorney fee provision. (*Id.* at pp. 482-483.) The Court of Appeal reversed the trial court's determination that the landlord was entitled to attorney fees in its unlawful detainer action against the attorney and law corporation defendants, because there was no finding that the attorney or the corporation was a party to the lease. In fact, the attorney "consistently maintained that he [was] not a party to the lease, and the trial court specifically refused to make a finding . . . that the lease was assigned to the corporation." (*Id.* at p. 485.)

In contrast, the record in this matter shows a valid assignment of the option to purchase from One Stop to appellant. Even if this assignment was limited to the option to purchase, as explained above, the language of the lease dictated that appellant, as assignee, was subject to the attorney fee provision. Thus, contrary to appellant's assertion, he would have been entitled to seek attorney fees had he prevailed.

Appellant also cites *Artesia Medical Development Co. v. Regency Associates, Ltd.* (1989) 214 Cal.App.3d 957. *Artesia* is also factually distinguishable and therefore not helpful to appellant. The *Artesia* court's decision that contractual attorney fees were not available to the defendants/respondents was due to the fact that the lawsuit was not based on enforcement of a contract right in which Artesia would be entitled to recover attorney fees. "On the contrary Artesia successfully had the lease declared null, void and forfeited." (*Id*. at pp. 962-963.) Here, in contrast, appellant's claims were based on rights he had been assigned under a fully enforceable contract. At no time did appellant argue that such contract was null and void. Appellant argued vigorously for enforcement

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9 Because we find that the lease provides authority for the award of attorney fees, we do not address the parties' arguments as to whether the purchase agreement between respondents and LaKretz could form the basis for the award.

of the option to purchase, which was one of the "terms and provisions of [the lease] agreement." Thus, appellant's claims were subject to the attorney fee provision.

Appellant attempts to distinguish *California Wholesale Material Supply, Inc. v. Norm Wilson & Sons, Inc.* (2002) 96 Cal.App.4th 598 (*California Wholesale*), relied upon by respondents. In *California Wholesale*, the trial court denied the prevailing party defendant's motion for attorney fees on the ground that the plaintiff's action did not arise out of the subcontract between the defendant and the defendant's subcontractor. The Court of Appeal reversed on the ground that the plaintiff had become the assignee of the subcontractor's rights in the subcontract. As assignee, the plaintiff had stepped into the shoes of subcontractor as a matter of law. Because the plaintiff was litigating its claim for money due to the subcontractor under the subcontract, the defendant was entitled to invoke the attorney fee provision in the subcontract and was entitled to recover its reasonable attorney fees from the assignee. (*Id.* at pp. 605-606.)

Appellant argues that, in contrast to the plaintiff in *California Wholesale*, appellant "stepped into no shoes." While appellant admits that he was assignee of the option to purchase, he contends that the assignment of that provision of the lease "severed that provision from the [l]ease." Thus, appellant argues, no attorney fee provision "followed" that assignment.

Appellant's position is not supported by the law or the facts. As set forth in *California Wholesale*, the law provides that an assignee steps into the shoes of the assignor as a matter of law. (*California Wholesale*, *supra*, 96 Cal.App.4th at p. 605.) Thus, when appellant became the assignee of the option to purchase, he stepped into the shoes of One Stop and took on all the rights and responsibilities associated with that position -- including the agreement to be bound by the attorney fee provision.

In support of his position that the option to purchase was completely "severed" from the rest of the contract upon assignment, appellant cites *Mott v. Cline* (1927) 200 Cal. 434, in which the California Supreme Court described an assignable option to purchase as "severable." (*Id.* at p. 450.) While the option at issue here is also "severable," appellant cites no authority indicating that a severable option can never be subject to other terms governing the lease. Here, the lease specified that any assignment was "expressly subject to the provisions of this lease." Thus, in contrast to appellant's position, by the express terms of the lease, the attorney fee provision "followed" the assignment in this matter.

In sum, appellant stepped into the shoes of One Stop when he became assignee of the option to purchase. The option to purchase was governed by the provisions of the lease, including the attorney fee provision. As in *California Wholesale,* appellant, as assignee, was subject to the attorney fee provision in that lease.[10]

2. The lease does not cap such fees at $10,000

Appellant next argues that even if this court finds that privity of contract exists between appellant and respondents, the lease caps an award of attorney fees at $10,000.

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[10] In his reply brief, appellant discusses two additional cases concerning Civil Code section 1717 (section 1717). Section 1717 establishes mutuality of remedy where a contractual provision makes recovery of attorney fees available for only one party. It also provides a reciprocal remedy for a nonsignatory party, where the nonsignatory party is sued on a contract as if he were a party to it, and the plaintiff would clearly be entitled to attorney fees should he prevail in enforcing the contractual obligation. (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128 (*Reynolds Metals*). The cases cited by appellant do not suggest that a different result is called for in this matter. In *Reynolds Metals,* the nonsignatory defendants were awarded attorney fees on an action to enforce unpaid promissory notes. The court reasoned that these defendants "would have been liable for attorney's fees pursuant to the fee provision had the plaintiff prevailed," thus, as prevailing parties, they were entitled to recover such fees pursuant to section 1717. (*Reynolds Metals,* at p. 129.) This conclusion is consistent with our holding here, as we have determined that, had appellant prevailed, respondents would have been liable to appellant for attorney fees pursuant to the attorney fee provision in the lease. In *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, also discussed by appellant, the prevailing defendant's motion for attorney fees under section 1717 was denied because the plaintiff, a broker to the defendant's lessee, would not have been entitled to attorney fees had it prevailed on its action for a commission pursuant to the contract between the defendant lessor and lessor's broker. However, in *Blickman Turkus,* the plaintiff was not an assignee of the contract between the defendant and his broker. Here, in contrast, appellant, as assignee, stepped into One Stop's shoes as a matter of law and thus became subject to the attorney fee provision in the lease. (*California Wholesale, supra,* 96 Cal.App.4th at p. 605.)

We have determined that privity of contract exists between appellant and respondents, thus the attorney fees were properly awarded. We analyze the language of the contract to determine whether the lease caps such an award at $10,000. In performing contractual interpretation, we ascertain the intent of the contracting parties solely from the written contract, if possible. We consider the language in context, and interpret words in accordance with their ordinary usage. (*American Alternative Ins. Corp. v. Superior Court* (2006) 135 Cal.App.4th 1239, 1245.)

Appellant relies on the following language in the option to purchase:

> "If Lessee matches the offer but fails for any reason to thereafter make the purchase, Lessee shall pay Lessor $10,000.00 to compensate Lessor for the expenses, losses, and inconvenience suffered."

Appellant argues that this provision caps any claim by respondents at $10,000, including any claim for attorney fees. Without citation to the record, appellant claims that "[a]ttorney fees are included in the Lease definition 'expenses, losses, and inconvenience.'"[11] Thus, appellant takes the position that if an award of attorney fees is legally cognizable, this passage caps such fees at $10,000.

We disagree with appellant's interpretation of the quoted provision. The provision provides for monetary damages where the lessee has exercised the option but thereafter fails to complete the purchase. We find no language indicating an intention to encompass the issue of attorney fees where, as here, the lessee's assignee initiates litigation in order to enforce its right to complete the purchase. Instead, the attorney fee provision serves that purpose. Because the attorney fee provision provides specific instruction on an award of attorney fees for enforcement of the contract, we find that the liquidated damages clause in the option to purchase is not relevant to such fees. (See Civ. Code, § 1641 ["The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other"].) Thus, we reject appellant's argument that attorney fees should be capped at $10,000.

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11 Our review of the lease did not reveal any such definition.

B. Fee reduction

Appellant's final argument is that, even if respondents are entitled to an award of attorney fees and such award is not capped at $10,000, the fee award is properly reduced by the amount of certain specified charges listed on the billing records of respondents' attorneys.

We are deferential to the trial court's decision regarding the appropriate amount of attorney fees to be awarded to the prevailing party. "The reasonableness of an order for attorney's fees is a matter which lies within the sound discretion of the trial court and absent a clear showing of abuse, the trial court's determination will not be disturbed. [Citation.]" (*In re Marriage of Millet* (1974) 41 Cal.App.3d 729, 731.) The experienced trial judge is the best judge of the value of professional services rendered, and its judgment "'will not be disturbed unless the appellate court is convinced that it is clearly wrong.' [Citations.]" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49.)

1. Apportionment

Appellant attacks eight specific items on respondents' attorneys' billing records, arguing that these items were incurred "in connection with [respondents'] Cross-Complaint against Canfield" or in the matter entitled *Morton LaKretz v. Andy Fakhoury*, superior court case No. BC342995.

Appellant also disputes the fees incurred in connection with mediation. He explains that the parties and their counsel in the consolidated cases attended a mediation which endeavored to settle: (1) appellant's claims against respondents; (2) LaKretz's claims against respondents; and (3) respondents' claims against Canfield. Appellant argues that, since there were four interests involved in the mediation, only 25 percent of such fees could properly be awarded to respondents against appellant.

Appellant further contests 6.8 hours of telephone calls, which he contends should have been apportioned among the various matters; as well as numerous hours of discovery and trial preparation work incurred after the matters were consolidated.

The declaration of respondents' attorney, Wendy Slavkin (Slavkin), submitted concurrently with respondents' motion for attorney fees and costs specified that the time for which respondents were seeking attorney fees did "not include time spent on the consolidated case." In fact, "where time was spent on issues common with the consolidated case, the time is apportioned as appropriate to the effort related to this case only." Considering Slavkin's declaration, the trial court was justified in its implied conclusion that the billing for which respondents sought an award had already been properly apportioned to reflect the matter involving appellant. Appellant has failed to make the necessary clear showing of abuse of discretion.

2. Fees incurred in connection with prior appeal

Next, appellant contests the fees incurred in connection with respondents' defense of the appeal of the trial court's summary judgment order, since respondents lost the appeal. Appellant cites no legal authority for his position that such charges were not properly awarded. Nor does the lease include any language limiting recoverable attorney fees to those spent on successful portions of the case. In contrast, once respondents were found to be the prevailing parties, they were entitled to their "reasonable attorney's fees and expenses" as well as "all other amounts and other relief" to which they were entitled. Absent any authority to the contrary, we decline to find an abuse of discretion in the trial court's decision to award such fees.

3. Fees incurred by attorney Amanda Potier (Potier)

Finally, appellant contests all fees related to attorney Potier, whom appellant contends did no properly compensable work on the matter. The trial court did not abuse its discretion in awarding the fees incurred by Potier. Slavkin testified in her declaration that "[d]ue to the complexity of issues" in the case, she sought to use Potier as an associate attorney to assist at trial. Potier was retained separately by respondents, and her declaration confirmed that she was hired to assist lead counsel "in the trial phase of this litigation." Appellant cites no authority for his position that her fees "should be deemed non-compensable." Again, appellant has failed to make the necessary clear showing of abuse of discretion, therefore we decline to find that such abuse occurred.

DISPOSITION

The judgments are affirmed. Respondents are entitled to their costs of appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

____________________________, J.
CHAVEZ

We concur:

____________________________, P. J.
BOREN

____________________________, J.
DOI TODD